IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICITON

INCOME TAX APPEAL NO.483 OF 2007

Kalpesh K. Shah
Shantivilla, Shantivani CHS.
premises, Nr.Club Acquire,
Lawrance High School Lane,
Devidas, Borivali (West),
Mumbai - 400 013. .. Appellant.

Versus

The Asstt. Commissioner of
Income Tax, Circle 15(1) or
his Successor C-11, 3rd Floor,
Prathyashkar Bhawan,
Bandra Kurla Complex,
Bandra (E), Mumbai .. Respondent.

Mr.S.N. Vidatia i/by Amarendra Mishra for the appellant.

Mr.A.D. Kango for the respondent.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

DATED : 31ST JULY, 2007.

ORAL JUDGMENT (Per J.P. Devadhar, J.) :

1. Heard.

2. This appeal is filed by the assessee-appellant under Section 260-A of the Income Tax Act, 1961 stating that the following questions of law arising out of the order of the Tribunal dated 30th January, 2006 in I.T.A. No.6323/Mum/03.

1. Whether on the facts and in the

circumstances, the Tribunal was justified in setting aside the impugned cash credit of Rs.7 lacs in respect of loans from Shri Y.J. Choksi Group and disallowance of interest of Rs.3,96,964/- thereon ?

2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal ought to have deleted the impugned additions by way of cash credit and disallowance of interest in view of gross violation of the principles of natural justice and directions given by the CIT (A) in his order dated 30.3.2001 ?

3. The appeal is admitted on the aforesaid questions and by consent of the parties, taken up for final hearing.

4. The assessment year involved herein is A.Y. 1997-98.

5. The assessee is an individual and carries on business in chemicals in the name and style of M/s.Shital Pharma.

6. Assessments for A.Y. 1997-98 was initially completed under Section 143(3) of the Act on 31st March, 2000 wherein additions aggregating to Rs.38,47,297/- were made in respect of cash credits of J.M. Shah group and Y.J. Choksi group.

7. Being aggrieved by the aforesaid order, the assessee filed an appeal before CIT (A) who by an

order dated 30th March, 2001 restored the issue of the appeal to the Assessing Officer with direction that the issue be determined after affording reasonable opportunity of hearing to the assessee. Being aggrieved by the aforesaid order, the assessee filed an appeal before the I.T.A.T. being I.T.A. No.3020/Mum/01.

8. In the meantime, as per directions made by CIT (A) the Assessing Officer passed fresh assessment order wherein additions of Rs.7,00,000/- in respect of loan taken from Mr.Y.J. Choksi group and disallowance of interest of Rs.3,96,964/- was made. Being aggrieved by the aforesaid order, assessee filed an appeal and the CIT (A) by his order dated 1st July, 2003 deleted entire amount of Rs.7,00,000/- added as unexplained cash credit and deleted disallowance of interest of Rs.3,96,964/- made by the Assessing Officer. Being aggrieved by the aforesaid order, revenue filed an Appeal before the Appellate Tribunal being I.T.A. No.6323/Mum/03.

9. By a common order dated 30th January, 2006, the I.T.A.T. disposed of both the appeals being I.T.A. No.3020/Mum/01 and I.T.A. No.6323/Mum/03. By the said order, the Tribunal dismissed the appeal filed by the assessee being I.T.A. No.3020/Mum/01

thereby confirming the order of CIT (A) in restoring the issue to the Assessing Officer. The Tribunal disposed of I.T.A. No.6323/Mum/03 filed by the revenue by passing similar order of remand. This appeal is filed by the assessee to challenge the order of the Tribunal in I.T.A. No.6323/Mum/03.

10. The dispute in I.T.A. No.6323/Mum/03 arose from the reassessment order passed by the A.O. after remand. In other words, once the additions of Rs.7,00,000/- as unexplained cash credits in the accounts of parties of Y.J. Choksi Group as well as disallowance of interest of Rs.3,96,964/- was made by the Assessing Officer in compliance with the remand order passed by CIT (A), the Tribunal ought to have decided the matter on merits, in stead of remanding the matter once again. It is apparent that the confession arose because both the appeals, one filed by the assessee challenging the order of CIT (A) in remanding the matter and another appeal filed by the revenue challenging the order of CIT (A) after remand were heard and disposed of by a common judgment.

11. In this view of the matter, order of the Tribunal passed in I.T.A. No.6323/Mum/03 cannot be sustained. Accordingly, impugned order dated 30th

January, 2006 insofar as it pertains to I.T.A. No.6323/Mum/03 is quashed and set aside. The Tribunal is directed to hear the I.T.A. No.6323/Mum/03 on merits and pass appropriate order thereon after giving an opportunity of hearing.

12. The Income Tax Appeal is allowed in the above terms with no order as to costs.

(F.I. REBELLO, J.)

(J.P. DEVADHAR, J.)